

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

The claimant agreed that he had injured his back before he began working for respondent. In 1997 claimant had injured his back and a CT scan indicated mild disk bulging at L3-4, L4-5 and L5-S1. When claimant began employment with respondent in 1998 he informed them of his back problems.

Claimant alleged that as he worked for respondent he developed worsening back pain with new symptoms in his legs. With the exception of one incident which occurred while claimant was pulling on boots at work, when the claimant told his supervisors about his back problems he denied that they were caused by his work for respondent and instead stated his condition was related to his previous back injury suffered before he began work for respondent.

In July 2003, the claimant left work, applied for and received short-term disability benefits. Claimant agreed that such benefits were not for workers compensation injuries. When claimant saw Dr. Kris Lewonowski on July 30, 2003, the doctor's records indicate there was a workers compensation injury at a former employer and a long history of low back pain for six years.

The claimant's short-term disability benefits terminated on October 31, 2003. On November 13, 2003, Dr. Lewonowski performed back surgery on claimant consisting of an L3-4, L4-5 and L5-S1 fusion. On November 14, 2003, claimant made a claim for compensation for back injuries each and every working day through July 22, 2003.

At the conclusion of the preliminary hearing, the ALJ concluded claimant had reported to respondent that his work activities were causing increased back symptoms. But the ALJ determined that the issue was whether claimant had suffered a permanent aggravation to his preexisting condition as a result of his work activities for respondent. Accordingly, the ALJ ordered an independent medical examination be conducted to address that issue. The parties agreed to Dr. Sergio Delgado to perform that examination.

After review of the prior diagnostic studies from claimant's 1997 injury, examination of claimant and review of the medical records, the doctor concluded claimant's medical condition was the natural and probable consequence of his preexisting degenerative disk disease and any injuries suffered working for respondent were temporary aggravations which did not accelerate the need for surgery. The doctor noted the diagnostic studies did not confirm any objective changes in claimant's back condition. The doctor further noted that he did not find a disk herniation and instead found a progression of what degenerative disk disease does, which is more spinal stenosis, more disk bulging, and more thickening

of the ligaments. The doctor noted that all of those findings are not related to work activities and are instead related to a natural progression of the preexisting disk disease.

The ALJ adopted Dr. Delgado's opinion and concluded that claimant failed to meet his burden of proof that his need for medical treatment was causally related to his work with respondent. Based upon the record compiled to date, the Board agrees and affirms.

As provided by the Act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim.¹

WHEREFORE, it is the finding of the Board that the Order of Administrative Law Judge Bruce E. Moore dated October 18, 2004, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of December 2004.

BOARD MEMBER

c: R. Todd King, Attorney for Claimant
Seth G. Valerius, Attorney for Respondent and its Insurance Carrier
Bruce E. Moore, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

¹ K.S.A. 44-534a(a)(2).